
(2019) 02 MP CK 0097

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 35913 Of 2018

Praveena Tiwari

APPELLANT

Vs

State Of Madhya Pradesh & Another

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 107, 482
Indian Penal Code, 1860 — Section 34, 306, 309, 420

Citation : (2019) 02 MP CK 0097

Hon'ble Judges : Rajendra Kumar Srivastav, J

Bench : Single Bench

Advocate : Sharad Verma, Akshay Namdeo

Final Decision : Allowed

Judgement

1. This Miscellaneous Criminal Case has been filed by the applicant/petitioner under Section 482 of the Cr.P.C. for quashing the FIR dated 29.06.2018 registered in Crime No.192/2018 at Police Station-Ratibadh, District-Bhopal, for an offence punishable under Section 306 read with Section 34 of the IPC.

2. Applicant/petitioner's case in brief is that deceased Deepak Verma committed suicide by consuming poisonous substance. Thereafter, a Marg report was registered bearing marg No.11/2018 at Police Station Ratibadh, District-Bhopal. During investigation, one suicidal note was found, in which certain allegations were made by the deceased against the present applicant and other co-accused persons, namely, Sudhir Bagade and J.K. Tyagi. According to the suicidal note, there was some money lending issues between the deceased and the present applicant and other co-accused persons, due to which, the deceased has committed suicide. Thereafter, the FIR was registered vide Crime No.192/2018 for an offence punishable under Section 306 read with Section 34 of the IPC against the present applicant and other co-accused persons, namely, Sudhir Bagade and J.K. Tyagi.

3. According to the petitioner/applicant the entire case is based upon suicidal note, but no ingredients are available on record to establish the aforesaid offence. In the case, there is no prima facie necessary ingredients to constitute offence punishable under Section 306 of the IPC against the applicant.

4. Applicant/petitioner stated in his petition that the originally prior to the incident, first information report was lodged by the applicant against the deceased vide Crime No.579/2017 at Police Station Kamla Nagar, District Bhopal for an offence punishable under Section 420 of the IPC, stating that deceased Deepak Verma had taken Rs.35,000/-from the present applicant on false pretext of constructing a house and deceased used the aforesaid amount. Thereafter, when the FIR was lodged by the applicant against the deceased, the deceased was sent to jail for a period of about two months and after that, he has been released on bail and due to extreme conditions, he consumed poisonous substance leaving suicidal note. Therefore, no prima facie case is made out against the present applicant/petitioner for harassing, torturing and demanding money from the deceased.

5. Learned Government Advocate for the respondent No.1/State opposes the petition by submitting that the deceased committed suicide by consuming poisonous substance and a suicidal note of the deceased is available on record. Therefore, there is prima facie material available on record for abetment to commit suicide by the deceased. Therefore, he prays that petition be dismissed.

6. Heard both the parties and perused the record.

7. It is evident from the record that the petitioner/accused lodged the FIR against the deceased and other co-accused person, namely, J.K. Tyagi on 28.04.2017 at Police Station-Kamla Nagar, District-Bhopal in Crime No.0579/2017 wherein it is mentioned that the petitioner/accused was working as contingency paid employee in the Municipal Corporation Bhopal. On 28.04.2017, deceased and one co-accused J.K. Tyagi came to the house of the petitioner/accused and asked her that the house was allotted for poor persons under the Scheme of "Pradhan Mantri and Mukhya Mantri Awas Yojana" and she deposited the amount of Rs.35,000/- with them, but house was not allotted to her under the aforesaid scheme. Therefore, the petitioner/accused demanded to return back the amount which was paid by her to the deceased and co-accused J.K. Tyagi, but they refused to return the aforesaid money. Thereafter, she filed a complaint case under Section 420 of the IPC at Police Station- Kamla Nagar, District-Bhopal against the deceased and co-accused J.K. Tyagi. During investigation, the statements of the witnesses i.e. Kiran Verma (wife of the deceased), Abhinav Verma (son of the deceased), Vinay Verma, Sumit Sen, Ashok Sen, Rajesh Kumar, Ajad Ahmed and Sahnawaz Ahmed have been recorded by the police. It is evident from the statements of these witnesses that the deceased was employed at Nagar Nigam Bhopal and at the time of incident, he left the service of Nagar Nigam as well as left his house. After one and half month, he returned to his house then police officials came to his home and took

the deceased and co-accused J.K.Tyagi in custody and they were sent to jail. Thereafter, deceased asked his family members that he was falsely implicated in this case by the present applicant and other co-accused persons. He did not get any money from any person. At the time of incident, he had taken wine and he told his family members that he was in tension and petitioner/accused and co-accused persons have falsely implicated him in this case. Deceased abused his wife in filthy language then his wife told the deceased that she will leave the house with her daughter then the deceased told her that I will leave the house and thereafter he consumed the poisonous substance.

8. During investigation, a suicidal note of the deceased was recovered. The suicidal note of the deceased is reproduced herein below :-

"सर मैंने किसी से भी किसी प्रकार का पैसा नहीं लिया है मैं बहुत परेशान हो गया हूँ मेरे बच्चे परेशान हो रहे हैं। मैं अपने परिवार के साथ नहीं रह पा रहा हूँ। जिसने भी आपके पास शिकायत करी है उनसे पूछिए कि पैसा किसके हाथ में दिया था। जो भी लेन-देन है वो सुधिर बागडे न्यू मल्ली अम्बेडकर नगर कोटरा सुल्ताना बाद सुधिर बागडे के पास अधिकारी की सील, बटटे, मल्ली के आवंटन तक मिल जाएँ और प्रवीना तिवारी झोन-6 नेहरू नगर मे कार्य करती है उसने भी कई लोग से आवास के नाम पर पैसा लिया है गोविंद साहू को मेडम ने मुझसे मिलाया था उससे 17000/- भी लिए थे उसके अलावा मुझे कोई नहीं जानता 17000/- में प्रवीना ने एक मोबाइल भी उसी वक्त लिया था।

इस लेनदेन का पूरा जिम्मा 1. प्रवीना तिवारी निवासी 17 ब्लॉक शबरी नगरी नेहरू नगर झोन-6 नगर निगम में कार्यरत 2. सुधिर बागडे निवासी न्यू मल्ली अम्बेडकर नगर कोटरा भोपाल

3. श्रृणु त्यागी-इनने भी बहुत पैसा खाया मुझे धोखा दिया मेरी मौत का कारण ये तीनों हैं।

मेरे बच्चों को परेशान मत करना ईश्वर तुमको छोड़ेगा नहीं।

मेरे घर का नम्बर-9752702005

किरण मैंने बहुत कोषिष कर ली लेकिन कहीं कोई रास्ता नहीं मिला मेरे पास सिर्फ एक रास्ता है वो है मौत मैं कैसे अपने को सही साबित करूँ हर कदम पर पैसा चाहिए और तुमसे अच्छा कौन जानेगा कि मेरे पास क्या है। संजय श्रीवास सर से मैंने दो बार बोला था कि हेमराज सोमकुंवर जी गलत कर रहे हैं। तो उनसे बोला कि उसको जरूरत होगी दे देगा। हेमराज सोमकुंवर और सुधिर बागडे ने बहुत गलत किया। और मैं उलझ गया। संजय श्रीवास सर ने जो भी लेन-देन किया उसका पूरा पैसा हेमराज और सुधिर बागडे के पास है।"

9. It is evident from the aforesaid suicidal note that the deceased had committed suicide due to tension and torture by the petitioner and other co-accused persons. The Hon'ble Apex Court dealt with the similar issue in the case of M.Mohan Vs. State represented by the Deputy Superintendent of Police reported in (2011) 3 SCC 626 has held as under:-

"36. We would like to deal with the concept of 'abetment'. Section 306 of the Code deals with 'abetment of suicide' which reads as under:

"306. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

37. The word 'suicide' in itself is nowhere defined in the Indian Penal Code, however, its meaning and import is well known and requires no explanation. 'Sui' means 'self' and 'cide' means 'killing', thus implying an act of self-killing. In short a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

38. In our country, while suicide itself is not an offence considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under section 309 of I.P.C.

39. Abetment of a thing' has been defined under section 107 of the Code. We deem it appropriate to reproduce section 107, which reads as under:

"107. Abetment of a thing - A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing."

Explanation 2 which has been inserted along with section 107 reads as under:

"Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

40. The Learned counsel also placed reliance on yet another judgment of this court in *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, in which a three-Judge Bench of this court had an occasion to deal with the case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide.

41. This Court in SCC para 20 of *Ramesh Kumar* (2001) 9 SCC 618: 2002 SCC(Cri) 1088 has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629) "20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In the said case this court came to the conclusion that there is no evidence and

material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema (appellant's wife therein) may necessarily be drawn.

42. In *State of West Bengal v. Orilal Jaiswal* (1994) SCC (Cri) 107, this Court has cautioned that (SCC p. 90, para 17), the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

43. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (16) SCC 605: (2010)3 SCC (Cri) 367, had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

10. The Hon'ble Apex Court dealt with the similar issue in the case of *S.S. Chhena Vs. Vijay Kumar Mahajan* and another reported in (1995) M.P.L.J. 458 has held as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must

have been intended to push the deceased into such a position that he committed suicide.

26. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.

27. When we carefully scrutinize and critically examine the facts of this case in the light of the settled legal position the conclusion becomes obvious that no conviction can be legally sustained without any credible evidence or material on record against the appellant. The order of framing a charge under section 306 IPC against the appellant is palpably erroneous and unsustainable. It would be travesty of justice to compel the appellant to face a criminal trial without any credible material whatsoever. Consequently, the order of framing charge under section 306 IPC against the appellant is quashed and all proceedings pending against him are also set aside."

11. It is revealed from the record that during investigation, statements of witnesses have been recorded by the police. It is revealed from the record that due to tension and discomfort of the deceased, he committed suicide by consuming poisonous substance because he left his service and he was sent to jail. After getting released from the jail, he consumed wine and some dispute arose between the deceased and his wife, thereafter, he committed suicide by consuming poisonous substance.

12. It is revealed from the case diary that the petitioner/accused lodged the FIR against the deceased for the offence punishable under Section 420 of the IPC in which it is alleged that the deceased had taken money from the petitioner/accused and one J.K. Tyagi for allotting the house under the Scheme of "Pradhan Mantri and Mukhya Mantri Awas Yojana" but no house was allotted to the petitioner/accused by the deceased and co-accused J.K. Tyagi. Thereafter, she demanded her money, but the deceased did not give any money. Thereafter, she lodged the FIR against the deceased and co-accused J.K. Tyagi then police arrested the deceased and co-accused J.K. Tyagi. Therefore, the deceased was in tension and discomfort. At the time of incident, he abused his wife in filthy language and when his wife told him that she is going to leave the house, the deceased committed suicide by consuming poisonous substance. Therefore, it cannot be said that the petitioner/accused abated the deceased for committing suicide.

13. There is no material evidence of active instigation/abetment by the petitioner to the deceased to commit suicide. There is no sufficient material to demonstrate that the petitioner was involved in instigating the deceased to commit suicide or have intention to instigate to commit suicide. After analyzing the provisions and facts of the case, this Court has found in the case that the deceased was in tension, discomfort and left his service and the petitioner demanded her money

from the deceased but deceased had refused to give the aforesaid money and due to that the petitioner/accused lodged the FIR against the deceased and co-accused J.K.Tyagi. Thereafter, police has arrested the deceased and co-accused and they were sent to jail and after that, he has been released on bail, due to extreme conditions, he consumed poisonous substance leaving suicidal note. Occurrence of such type of incident would not fall under the purview of abetment for suicide.

14. In various other decisions such as in the case of Ashok Kumar Sawadiya v. State of M.P. [2001(I) MPWN 93]; Abdul Hanif v. State of M.P. [2002 (II) MPWN 12]; Kashiram v. State of M.P. [2006 (I) MPWN 106]; Prakashchand v. State of M.P. [2007 (I) MPWN 20]; Pramod Kumar and another v. State of M.P. [2007 (II) MPWN 26]; Devendra Singh v. State of M.P. [2007 (III) MPWN 95]; and Nirmal Jain and others v. State of M.P. [2008 (II) MPWN 66]. In all these decisions it is laid down that if the instigation for commission of suicide is not proved by the prosecution then certainly the charge under section 306 IPC cannot be framed.

15. It is a money lending dispute and the deceased did not give the money back to the petitioner, due to which the petitioner lodged the FIR against the deceased. As per the statement of deceased's wife and other witnesses, it is found that the deceased was in tension and discomfort because deceased had left his service and some dispute took place between the deceased and his wife. Due to that, the deceased consumed poisonous substance. Hence, no case for the offence punishable under Section 306 of the IPC is made out against the petitioners.

16. Thus, on perusal of the decision of the Hon'ble Apex Court relied on in various decisions of this Court and on perusal of the evidence available on record against the petitioner/accused, it is not proved by the prosecution that the petitioner/accused had ever instigated the deceased for commission of suicide. Consequently, the petition is allowed. The impugned order dated 29.06.2018 vide Crime No.192/2018 registered at Police Station- Ratibadh, District-Bhopal for the offence punishable under Section 306 read with Section 34 of the IPC and criminal proceedings pursuant thereto, are hereby set-aside against the present petitioner namely, Praveena Tiwari.